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116 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1963-2023 (O&M)
Date of Decision: 28.03.2023

Rachna Malhotra

..... Petitioner

Versus

Komal Kharbanda and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Ms. Monika Thakur, Advocate,
for the petitioner.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 24.01.2023 (Annexure P-5) passed by the Civil Judge (Senior Division), Ludhiana, whereby the application filed by the petitioner for granting an opportunity to cross-examine the plaintiffs/respondents in Civil Suit No.3372 of 2018 has been dismissed.

It is submitted by the learned counsel for the petitioner that the suit involved in the case is a suit for injunction filed by the in-laws of the petitioner/daughter-in-law to restrain her from interfering in the matrimonial home. The plaintiffs have taken as many as 19 opportunities in leading their evidence. Not only that, the evidence of the plaintiffs was also closed vide order dated 16.07.2022; but with the condition that if the plaintiffs bring a witness for further cross-examination, the same shall be cross-examined by

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the defendant. Thereafter, the petitioner-defendant had partly cross-examined the witness on 04.08.2022. The case was adjourned to 26.08.2022. However, the Presiding Officer was on leave on that day, therefore, the case was adjourned to 13.09.2022. On that date, unfortunately, the counsel for the petitioner could not cross-examine the plaintiffs because he happened to be busy in another Court. Therefore, the Court has treated the cross-examination as nil. Learned counsel has further submitted that the petitioner has been put to disadvantage only for a single default, as against 19 opportunities granted to the plaintiffs. Otherwise also, since the petitioner is the contesting defendant in the suit, therefore, her defence would be seriously prejudiced, if she is not granted opportunity to cross-examine plaintiffs No.1 and 2. Therefore, the petitioner deserves to be granted one opportunity to cross-examine the plaintiffs and thereafter, to lead her evidence.

In view of the nature of the order being passed in this case, this Court does not see any requirement of issuing notice to the respondents; at this stage.

Having heard learned counsel for the petitioner and having perused the case file, this Court finds that although there have been some default on the part of the petitioner on the day when the Trial Court has passed the impugned order, however, the overall situation of the case suggests that the petitioner should have been granted one more opportunity to cross-examine the plaintiffs. Moreover, the petitioner being contesting

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defendant in the suit, her defence would be seriously prejudiced, if she is denied the opportunity to cross-examine the plaintiffs. Therefore, it would not be inappropriate to grant one more opportunity to the petitioner to cross-examine the plaintiffs.

In view of the above, the present petition is allowed and the impugned order passed by the Trial Court is set aside. The Trial Court is directed to grant one effective opportunity to the petitioner to cross-examine the plaintiffs.

(RAJBIR SEHRAWAT)
JUDGE

28.03.2023
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No